STATE OF MICHIGAN

COURT OF APPEALS

PAUL DAVID JACKSON,

Plaintiff-Appellee,

v

TRACI BETH JACKSON,

Defendant-Appellant.

UNPUBLISHED
February 19, 2008

No. 271917
Oakland Circuit Court
LC No. 2004-692487-DM

Before: Murphy, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Defendant, Traci Beth Jackson, appeals as of right an amended judgment of divorce entered by the trial court on July 3, 2006. On appeal, defendant argues that the trial court erred in dividing the marital estate, claiming that the trial court's award of 97 percent of the marital estate to plaintiff was inequitable. We affirm.

I. FACTS

Plaintiff, Paul David Jackson, filed for divorce on April 20, 2004, after defendant was arrested for attempting to poison him with D-Con rat poison. A bench trial was held on August 12, 2005 and August 22, 2005.

Plaintiff testified at the bench trial that he and defendant met in fourth grade, when they were both 11 years old. They went their separate ways during high school and college and then started dating in January 1992, while plaintiff was going to medical school at Michigan State University. They were married in July 1995 in Southfield, after plaintiff completed his medical internship. They have two children together, Jacob, born April 26, 1997, and Samantha, born November 26, 2000. Defendant has a B.S. in health science and a nursing degree.

Both plaintiff and defendant worked at Botsford Hospital until Jacob's birth in 1997. At that time, defendant quit her job as a nurse and became a stay-at-home mother. She has not worked outside of the home since. Defendant's parents lived with the couple for six months rent-free while the parents were having financial difficulties. After six months, defendant had her parents move out because they found out about her extra-marital affair. Her father gave her "a hard time" about the affair and her mother would follow her everywhere so she could not be alone. Plaintiff did not know at the time why defendant wanted her parents out of the house.

The couple had a housekeeper/nanny four to five days per week after Samantha was born. Beginning in November 2003, defendant was getting therapy for "a bad neck issue." Even though they already had a nanny, defendant asked plaintiff if she could put Samantha in day care while defendant got therapy and ran errands. Defendant was only supposed to put Samantha in day care two days a week but was putting her in four to five days per week. Plaintiff found out later that defendant signed up for motorcycle lessons at Oakland Community College because her lover, Steve Lombardi, was a motorcycle rider.

In November 2003 defendant told plaintiff that a friend of hers, Lombardi, was going to have a guy's weekend up north and suggested he go on the trip with Lombardi. Plaintiff said he did not know Lombardi and did not want to go on a trip with him.

Plaintiff testified that in December 2003 defendant was "going through a lot at that time physically," so he asked her, "what's going on." Plaintiff testified that defendant answered that she loved him but was not sure if she was in love with him. Plaintiff then offered to move out if it would help defendant gather her thoughts. A few days later defendant told him that everything was fine, and she had just been feeling emotional.

From October 2003 through March of 2004, the couple and their two children went on vacations to Las Vegas and Toronto. Plaintiff later found out through phone records that defendant was talking on her cell phone to her lover while on the vacations.

Plaintiff testified that while on the trip to Las Vegas, the couple made a list of all their "assets and financial matters," at the request of defendant. Defendant wanted "details and specifics down to percentage sharings and holdings." Plaintiff told defendant that he was pleased she was finally interested in taking care of their finances in the event plaintiff died. Defendant thereafter titled the list "PDL," which, according to plaintiff, stands for "Paul Dead List."[1] In addition to all of the business assets, the list showed three life insurance policies worth $1,000,000, $500,000, and $100,000. Plaintiff testified that in "March [sic] or June of 2003" defendant asked him to increase the amount of his life insurance, which he did.

In March 2004, plaintiff went on a trip to Las Vegas with his three business partners. On the day that he left for the trip, defendant made him coffee, which was unusual. He only took a couple of drinks of the coffee because it was too sweet. Plaintiff ended up sick that day with diarrhea and vomiting. That same day, plaintiff received a call from a friend, informing him that defendant was having an affair and was trying to kill plaintiff. The friend told plaintiff that defendant was "trying to pay some man $50,000 to kill" him on his "late night [at the office], which is Wednesday." While plaintiff was in Las Vegas he had a private investigator follow

[1] Defendant also addressed an e-mail to Lombardi, referencing the assets plaintiff and defendant listed on the "PDL" document while in Las Vegas. Defendant wrote, "I don't have a calculator down here, so I will save it for later. [T]he suspense is killing me—what is the number that I will end up with??????????"

defendant, and the investigator found out that defendant was going out with Lombardi and spending the night at his house.

Plaintiff contacted the authorities. Police did not have enough evidence to arrest defendant until approximately five weeks later. During that time, plaintiff cooperated with police and tried to maintain a normal relationship with defendant. Plaintiff did not sleep and lost 20 pounds because he was fearful of eating and sleeping. Defendant was ultimately arrested for and convicted of attempted murder by poisoning, MCL 750.91, and was sentenced to 9 to 25 years' imprisonment.[2]

Plaintiff testified that he did not have any extra-marital affairs while married to defendant. He filed for divorce immediately after defendant was arrested. He testified that if he found out defendant was having the affair with Lombardi but had not tried to kill him, he would not have divorced her. He stated that he was in love with her and would have forgiven her.

The trial court issued its opinion and order on October 21, 2005. The only issue to be decided was division of the marital estate. The court found the value of the marital estate to be $804,209. The court also found that both parties were 38 years old and in good physical health. Plaintiff was a physician and earned upwards of $300,000 annually, and defendant was a registered nurse and, upon her release from prison, would be capable of earning a living. The court noted that plaintiff did what he could to ensure defendant's happiness, even providing financial help to members of defendant's family. Plaintiff offered to cut back on his work hours so he could spend more time with defendant and their two children, and when defendant told plaintiff that she was not sure if she was in love with him, plaintiff offered to move out. The court found that defendant was having an extra-marital affair with Lombardi and the two of them conspired to end plaintiff's life. The court held that defendant's conduct was so egregious that it was appropriate to give great weight to fault in deciding an equitable property division.

The court stated that defendant already received $26,500, or three percent, from the estate for her legal defense. The court held that no further assets would be awarded defendant beyond the $26,500. Defendant moved the trial court for reconsideration, which was denied. A judgment of divorce was issued November 9, 2005.[3] Defendant now appeals.

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[2] This Court affirmed her conviction and sentence, *People v Jackson*, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2006 (Docket No. 260313), and our Supreme Court denied her application for leave to appeal her criminal conviction, *People v Jackson*, 477 Mich 973; 725 NW2d 46 (2006).

[3] On December 19, 2005, an order was entered terminating defendant's parental rights, which this Court affirmed in *In re Jackson*, unpublished opinion per curiam of the Court of Appeals, issued September 21, 2006 (Docket No. 267963). Our Supreme Court denied her application for leave to appeal. *In re Jackson*, 477 Mich 926; 722 NW2d 897 (2006).

II. STANDARD OF REVIEW

In reviewing a divorce action, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Gates v Gates*, 256 Mich App 420, 422-423; 664 NW2d 231 (2003). Findings of fact will not be reversed unless clearly erroneous. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). If the trial court's findings of fact are upheld, then this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands (Sands II)*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks*, *supra* at 151-152; *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

III. ANALYSIS

Defendant argues that the trial court's award of the entire marital estate to plaintiff, other than $26,500 defendant received for her legal defense, was inequitable. We disagree.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara*, *supra* at 188. The division need not be mathematically equal, but any significant departure from congruence must be clearly explained. *Gates*, *supra* at 423. In making an equitable distribution, the trial court must consider the *Sparks* factors, which include the duration of the marriage, the contribution of each party to the marital estate, the age, health and life status of the parties, their needs and circumstances, earning abilities, past relations and conduct, and general principles of equity. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks*, *supra* at 158-160.

The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue or disproportionate weight. *Sparks*, *supra* at 158; *McDougal*, *supra* at 89. "[W]here any of the factors are relevant to the value of the property or to the needs of the parties, the trial court must make specific findings of fact regarding those factors." *McNamara*, *supra* at 186. While the trial court has broad discretion in fashioning an equitable remedy, the "court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Sparks*, *supra* at 158.

Michigan courts may consider fault as one of the *Sparks* factors when dividing property, but it should not be the only factor. *McDougal*, *supra* at 88; *Sparks*, *supra* at 158. The weight a court should assign to fault in any given case calls for "a subjective response." *Hanaway v Hanaway*, 208 Mich App 278, 297; 572 NW2d 792 (1995). "The trial court is in the best position to determine the extent to which each party's activities contributed to the breakdown of the marriage." *Id*.

In the instant case, the trial court stated that, while fault should not constitute a punitive basis for an inequitable division, defendant's conduct was so egregious that it was "appropriate to weigh fault very heavily in deciding an equitable distribution of the marital estate." The court

held that defendant was at fault for the breakdown of the marriage, her conduct was shocking and egregious, and she should not be allowed to benefit from her wrongdoing. In addition, the court considered plaintiff's decreased ability to earn a living given that he is now solely responsible for the day-to-day care of the children and household.

Neither party contests the trial court's findings of fact; therefore, the only issue before this Court is the distribution of the marital estate. Defendant asserts that the property division is contrary to Michigan law given that the trial court considered only the fault factor, and *Sparks* and *McDougal* hold that courts cannot place all weight on a single factor. We agree. However, the trial court's error does not require reversal because the trial court reached the right result, but for the wrong reason. *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006).

While we acknowledge that the trial court erred in improperly weighing fault more heavily than any of the other *Sparks* factors when dividing the marital property in this case, its error does not require reversal because defendant comes to this Court with unclean hands. The doctrine of clean hands holds that "'one who seeks the aid of equity must come in with clean hands.'" *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 463; 646 NW2d 455 (2002) (citations omitted). Indeed, our Supreme Court has described the scope and purpose of the doctrine of clean hands as

> a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the [opposing party]. That doctrine is rooted in the historical concept of the court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.' [*Id.* at 463.]

See also *Sands v Sands (Sands I)*, 192 Mich App 698, 704-705; 482 NW2d 203 (1992), aff'd *Sands II*, *supra* (applying the clean-hands doctrine and holding that the defendant-husband forfeit marital assets that he attempted to conceal during a divorce action).

Here, there is ample evidence that defendant comes to this Court with unclean hands. The trial court noted that plaintiff offered to move out if defendant was not happy with their marriage, but defendant declined plaintiff's offer. The court noted that defendant and her lover reviewed a list showing all of the marital assets. The list is entitled "PDL," which stands for "Paul Dead List." In an email referencing the list, defendant stated, "[T]he suspense is killing me – what is the number that I will end up with??????????" If defendant was unhappy in her marriage, she could have divorced plaintiff and would presumably have received close to one half of the marital estate. However, defendant wanted more than an equitable share of the marital estate. Defendant wanted the entire estate, plus the payout from plaintiff's life insurance policies, and she was apparently willing to do anything, including killing her husband, to get it. Defendant here has unclean hands, and, like the trial court, we decline to "abet inequity" by rewarding her for her misconduct.

Defendant also argues that the award was not "roughly congruent" as required by *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994), since a normal ten-year marriage would presumably result in a 50/50 split of marital property. Thus, according to defendant, a

three percent award of the marital property is unfair and inequitable given that the parties were happily married for a majority of the marriage, and the bad acts only occurred in the final two years of marriage. However, we note that significant departures from congruence are permitted, as long as the departures are clearly explained by the trial court. *McNamara*, *supra* at 188. Here, the trial court explained its significant departure from congruence by providing detail of defendant's egregious misconduct. Therefore, defendant's argument is meritless.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Bill Schuette